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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,758	06/25/2003	Helmut Jerg	2000P13027WOLUS	2139
46726	7590	05/17/2005	EXAMINER	
JOHN T. WINBURN 100 BOSCH BOULEVARD NEW BERN, NC 28562			KIM, YOON YOUNG	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 05/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,758

Applicant(s)

JERG, HELMUT

Examiner

Yoon-Young Kim

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 27-30 is/are allowed.
- 6) ☒ Claim(s) 10, 11, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 12-17 and 20-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

This office action is in response to the Amendment that was filed on March 14, 2005.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 10, 11, 18, and 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8-19 of copending Application No. 10/603,531. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both disclose a filter having filter openings, which openings vary in cross-section automatically in accordance with an inherent variable of the medium passing there through.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10 and 11 rejected under 35 U.S.C. 102(b) as being anticipated by Silverwater, U.S. Patent No. 4,783,271.

Regarding Claim 10, Silverwater discloses a filter (Fig. 1, #5) for a medium passing therethrough, comprising:

a filter body (#13) including a plurality of filter openings (#16);

the filter openings each having a passage cross-section; and

the filter opening passage cross-sections vary automatically in response to a variable inherent in the medium passing therethrough (Col.5, Line 59 - Col. 6, Line 30).

Regarding Claim 11, Silverwater discloses that the filter openings substantially screened or covered over by means (#53) whose position relative to the filter openings varies under the influence of the heat of the medium passing therethrough (Col.5, Line 59 - Col. 6, Line 30).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue et al., U.S. Patent No. 5,904,163 in view of Bartelt et al., U.S. Patent No. 5,554,284.

Regarding Claim 18, Inoue discloses a dishwashing machine (Fig.1, #1) including a filter (Fig. 7, #19) for a medium passing therethrough, comprising: a filter body including a plurality of filter openings (Col. 6, Lines 2-4); and the filter openings each having a passage cross-section. Inoue does not disclose a means for varying the cross-section of the openings in response to a characteristic inherent to the medium flowing through the openings. Bartelt teaches a filter (Fig. 3, #17) including opening passage cross-sections (Fig. 1 and 3, #110), which vary automatically in response to a variable inherent in the medium passing therethrough (Col. 4, Lines 8-12).

It would have been obvious to one of ordinary skill in the art to modify Inoue by adding the flap-like element of Bartelt for efficient self-cleaning of the filter (Col. 2, Lines 46-52).

7. Claim 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue in view of Bartelt as applied to claim 18 above, and further in view of Silverwater.

Regarding Claim 19, Inoue in view of Bartelt discloses filter openings which are substantially screened or covered by tongues cut out of a metal plate but does not disclose a material of manufacture influenced by heat. Silverwater teaches a fluid filter assembly (Fig. 1, #5) including a material of manufacture being a bimetal or shape memory metal which moves between a first shape at one temperature and a second shape at another temperature (Col. 5, Lines 20-26).

It would have been obvious to one of ordinary skill in the art to construct the screening or covering elements of Bartelt with the bimetal or shape memory metal used by Silverwater, causing their state relative to the openings to vary under the influence of heat, because it is material that is common in the filter art.

Allowable Subject Matter

8. Claims 12-17 and 20-26 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 27-30 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record neither teaches nor suggests an element acting on the perforated plate to shift the perforated plate under the influence of a change of temperature of the medium passing therethrough between the first position and the second position.

Silverwater discloses a filter having filter openings, which openings vary in cross-section automatically in accordance with an inherent variable of the medium passing there through but does not disclose an element acting on the filter under the influence of temperature changes.

Response to Arguments

9. Applicant's arguments filed March 14, 2005 have been fully considered but they are not persuasive. Silverwater, U.S. Patent No. 4,783,271 does disclose the filter recited in Claims 10-11. Inoue et al., U.S. Patent No. 5,904,163 in view of Bartelt et al., U.S. Patent No. 5,554,284 also discloses the filter recited in Claim 18. Finally, Inoue in view of Bartelt, and further in view of Silverwater discloses the filter recited in Claim 19.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yoon-Young Kim whose telephone number is (571) 272-2240. The examiner can normally be reached on 8:30-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YK
05/05/05


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